

## Update: Criminal Procedure Monograph 8—Felony Sentencing

### Part II—Scoring the Statutory Sentencing Guidelines

#### 8.5 Scoring an Offender’s Prior Record Variables (PRVs)

##### G. PRV 5—Prior Misdemeanor Convictions or Prior Misdemeanor Juvenile Adjudications

Insert the following text after the November 2005 update to page 29:

Previous “non-OUIL alcohol-related convictions” are not convictions involving a controlled substance for purposes of scoring PRV 5. *People v Endres*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006).

## Part II—Scoring the Statutory Sentencing Guidelines

### 8.5 Scoring an Offender's Prior Record Variables (PRVs)

#### H. PRV 6—Relationship to the Criminal Justice System

##### 1. Case Law Under the Statutory Guidelines

Insert the following text before the partial paragraph at the bottom of page 31:

A defendant has “a prior relationship with the criminal justice system” for purposes of scoring PRV 6 when disposition of a misdemeanor crime committed by the defendant is pending at the time the defendant committed the sentencing offense. *People v Endres*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006).

## Part II—Scoring the Statutory Sentencing Guidelines

### 8.6 Scoring an Offender's Offense Variables (OVs)

#### D. OV 3—Physical Injury to a Victim

##### 2. Case Law Under the Statutory Guidelines

Insert the following text before the partial paragraph at the bottom of page 44:

Points are appropriately scored for OV 3 only where there is record evidence of a victim's injury; a prosecutor's file notes do not constitute record evidence. *People v Endres*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006).

## Part II—Scoring the Statutory Sentencing Guidelines

### 8.6 Scoring an Offender's Offense Variables (OVs)

#### J. OV 9—Number of Victims

##### 2. Case Law Under the Statutory Guidelines

Insert the following text after the third paragraph on page 58:

**Note:** In *People v Melton*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006), a panel of the Court of Appeals expressed its disagreement with *People v Knowles*, 256 Mich App 53, 61–63 (2003), in which the Court held that financial institutions could be victims for purposes of OV 9. Although the *Melton* Court was obligated by *Knowles* to affirm the defendant's OV 9 score, the *Melton* Court explained that OV 9 was not intended to account for victims who suffered financial injury, or, as was the case in *Melton*, for victims deprived of other property, and the Court recommended that the issue be resolved by submission to a conflicts panel pursuant to MCR 7.215(J)(3).

## Part II—Scoring the Statutory Sentencing Guidelines

### 8.6 Scoring an Offender's Offense Variables (OVs)

#### T. OV 19—Threat to the Security of a Penal Institution or Court or Interference with the Administration of Justice or Emergency Services

Insert the following text after the last full paragraph at the bottom of page 79:

A defendant's conduct is properly scored under OV 19 where the defendant threatens to kill a victim of the crime committed. *People v Endres*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006). Without regard to a defendant's intention when the threat was issued, fifteen points are appropriate because the "threats resulted in the interference with the administration of justice, either by preventing the victim from coming forward sooner or impacting his testimony against defendant." *Endres, supra* at \_\_\_.

## Part VII—Fines, Costs, Assessments, and Restitution

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text before the first paragraph in Part VII, near the bottom of page 156:

MCL 769.1k provides a general statutory basis for a court’s authority to impose specified monetary penalties when sentencing a defendant and to collect the amounts owed at any time. MCL 769.1k states:

“(1) If a defendant enters a plea of guilty or nolo contendere or if the court determines after a hearing or trial that the defendant is guilty, both of the following apply at the time of the sentencing or at the time entry of judgment of guilt is deferred pursuant to statute or sentencing is delayed pursuant to statute:

“(a) The court shall impose the minimum state costs as set forth in [MCL 769.1j].

“(b) The court may impose any or all of the following:

“(i) Any fine.

“(ii) Any cost in addition to the minimum state cost set forth in subdivision (a).

“(iii) The expenses of providing legal assistance to the defendant.

“(iv) Any assessment authorized by law.

“(v) Reimbursement under [MCL 769.1f].

“(2) Subsection (1) applies regardless of whether the defendant is placed on probation, probation is revoked, or the defendant is discharged from probation.

“(3) The court may require the defendant to pay any fine, cost, or assessment ordered to be paid under this section by wage assignment.

“(4) The court may provide for the amounts imposed under this section to be collected at any time.”

### 8.33 Fines

Effective January 1, 2006, 2005 PA 316 added MCL 769.1k, a statute authorizing a court to impose “any fine” on a defendant at the time of sentencing, at the time a deferred adjudication of guilt is entered, or at the time

sentencing is delayed. Replace the first sentence in the first paragraph near the top of page 157 with the following text:

Pursuant to MCL 769.1k, courts have general authority to impose “any fine” on a convicted defendant. According to MCL 769.1k(1)(b)(i), at the time of sentencing or a delay in sentencing or entry of a deferred judgment of guilt, a court may impose any fine on a defendant convicted by plea (guilty or nolo contendere) or found guilty by the court after a hearing or trial. Specific authority to impose a fine, and the maximum amount of that fine, is often included in the language of the applicable penal statute.

Add the following text to the second paragraph on page 157:

The court may require a defendant to pay by wage assignment any fine imposed under MCL 769.1k, and the court may provide that any fine imposed under MCL 769.1k be collected at any time. MCL 769.1k(3), (4).

**As a condition of probation.**

Insert the following text after the last paragraph on page 157:

The fines authorized by MCL 769.1k(1)(b)(i) also apply when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). A defendant may be required to pay by wage assignment any fine imposed under MCL 769.1k, MCL 769.1k(3), and the court may provide that those fines be collected at any time, MCL 769.1k(4).

## Part VII—Fines, Costs, Assessments, and Restitution

### 8.34 Costs

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text after the first paragraph on page 158:

MCL 769.1k is a procedural statute that provides a court with general authority to impose “[a]ny cost in addition to the minimum state cost” when sentencing a defendant in certain circumstances. MCL 769.1k(1)(b)(ii). In addition to the authority to impose costs, MCL 769.1k(3) authorizes a court to order that a defendant pay by wage assignment any of the costs authorized in MCL 769.1k(1). A court may provide for the collection of costs imposed under MCL 769.1k at any time. MCL 769.1k(4).

#### **As a condition of probation.**

Insert the following text before the paragraph beginning with “When determining the appropriate amount of costs...” on page 158:

The costs authorized by MCL 769.1k(1)(b)(ii) also apply when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). A defendant may be required to pay by wage assignment any cost imposed under MCL 769.1k, MCL 769.1k(3), and the court may provide that those costs be collected at any time, MCL 769.1k(4).



## Part VII—Fines, Costs, Assessments, and Restitution

### 8.34 Costs

#### C. Costs of a Court-Appointed Attorney

Effective January 1, 2006, 2005 PA 316 added MCL 769.1k to the Code of Criminal Procedure. Insert the following text before the first paragraph on page 166:

MCL 769.1k provides a court with general authority to impose costs on a defendant at the time a defendant is sentenced, at the time a defendant's sentence is delayed, or at the time entry of an adjudication of guilt is deferred. MCL 769.1k(1)(b)(iii) specifically permits a court to impose on a defendant "[t]he expenses of providing legal assistance to the defendant." In addition to the authority to impose on a defendant the costs of his or her legal representation, MCL 769.1k(3) authorizes a court to order that a defendant pay by wage assignment the cost of legal representation imposed pursuant to MCL 769.1k(1)(b)(iii). A court may provide for the collection of any costs imposed under MCL 769.1k(1) at any time. MCL 769.1k(4).

#### **As a condition of probation.**

Insert the following text immediately before Section 8.35 near the bottom of page 167:

The general authority to impose the monetary penalties listed in MCL 769.1k(1)(a) and (b) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). A defendant may be required to pay by wage assignment the costs of his or her legal representation imposed pursuant to MCL 769.1k(1)(b)(iii), MCL 769.1k(3), and the court may provide that those costs be collected at any time, MCL 769.1k(4).

## Part VII—Fines, Costs, Assessments, and Restitution

### 8.35 Minimum State Costs

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text after the **Note** on the bottom of page 167:

MCL 769.1k provides a court with general authority to impose several specific monetary penalties at the time a defendant is sentenced, at the time a defendant's sentence is delayed, or at the time entry of an adjudication of guilt is deferred. MCL 769.1k(1)(a) expressly requires a court to "impose the minimum state costs as set forth in [MCL 769.1j]." The language used in MCL 769.1k(1)(a) does not appear to clarify or alter the condition discussed in the above **Note**. The new statutory provision mandates only that a court impose the minimum state costs according to MCL 769.1j, and MCL 769.1j conditions the imposition of minimum state costs on whether a defendant is ordered to pay other fines, costs, or assessments.

In addition to the authority to impose minimum state costs, MCL 769.1k(3) authorizes a court to order that a defendant pay by wage assignment any of the costs authorized in MCL 769.1k(1). A court may provide for the collection of minimum state costs imposed under MCL 769.1k at any time. MCL 769.1k(4).

#### **As a condition of probation.**

Insert the following text after the paragraph at the top of page 168:

The general authority to impose the monetary penalties listed in MCL 769.1k(1)(a) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). A defendant may be required to pay by wage assignment the minimum state costs imposed pursuant to MCL 769.1k(1)(a), MCL 769.1k(3), and the court may provide that those costs be collected at any time, MCL 769.1k(4).

## Part VII—Fines, Costs, Assessments, and Restitution

### 8.36 Crime Victim Assessment

Effective January 1, 2006, 2005 PA 315 amended MCL 780.905 to require payment of the crime victim assessment whenever a defendant is charged with a qualifying offense and the charge is resolved in a manner specified by the statute. Replace the first paragraph and corresponding side note on page 168 with the following text:

Whenever an individual is charged with a felony offense and the charge “is resolved by conviction, by assignment of the defendant to youthful trainee status, by a delayed sentence or deferred entry of judgment of guilt, or in another way that is not an acquittal or unconditional dismissal,” the court must order the individual to pay a \$60.00 crime victim assessment. MCL 780.905(1). In contrast to the minimum state cost, which must be ordered for each felony conviction arising from a single case, only one crime victim assessment per case may be ordered, even when the case involves multiple offenses. MCL 780.905(2).

**Note:** In addition to felony offenses, crime victim assessments must be ordered in cases involving persons charged with “serious” or “specified” misdemeanor offenses. MCL 780.905(1). See Miller, *Crime Victim Rights Manual—Revised Edition* (MJI, 2005), Section 2.8, for more information about crime victim assessments.

Also effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Add the following text after the first paragraph in this section:

MCL 769.1k provides a court with general authority to impose “[a]ny assessment authorized by law” on a defendant at the time a defendant is sentenced, at the time a defendant’s sentence is delayed, or at the time entry of an adjudication of guilt is deferred. MCL 769.1k(1)(b)(iv). MCL 769.1k(3) authorizes a court to order that a defendant pay by wage assignment an assessment imposed pursuant to MCL 769.1k(1)(b)(iv). A court may provide for the collection of any assessment imposed under MCL 769.1k(1) at any time. MCL 769.1k(4).

#### **As a condition of probation.**

Insert the following text immediately before Section 8.37 on page 168:

The general authority to impose the monetary penalties in MCL 769.1k(1)(b) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). MCL 769.1k(3) authorizes a court to order that a defendant pay by wage assignment an

assessment imposed pursuant to MCL 769.1k(1)(b)(iv). A court may provide for the collection of any assessment imposed under MCL 769.1k(1) at any time. MCL 769.1k(4).

## Part VIII—Specific Types of Sentences

### 8.40 Probation

#### **Mandatory terms and conditions of probation.**

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text on page 173 after the list of items preceded by dashes and before the paragraph beginning with “If a defendant is placed on probation...”:

MCL 769.1k(1)(a) requires a court to impose minimum state costs on a defendant at the time a defendant is sentenced, at the time a defendant’s sentence is delayed, or at the time entry of an adjudication of guilt is deferred. MCL 769.1k(1)(a) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2).

For minimum state costs ordered pursuant to MCL 769.1k, MCL 769.1k(3) authorizes a court to order that a defendant pay such costs by wage assignment. In addition, a court may provide for the collection of any costs imposed pursuant to MCL 769.1k at any time. MCL 769.1k(4).

## Part VIII—Specific Types of Sentences

### 8.40 Probation

#### **Discretionary terms and conditions.**

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text on page 175 immediately before “**Amending an order of probation**”:

MCL 769.1k(1)(b) provides a court with general authority to impose a fine, costs, expenses of providing legal assistance, assessments, and reimbursement under MCL 769.1f on a defendant at the time a defendant is sentenced, at the time a defendant’s sentence is delayed, or at the time entry of an adjudication of guilt is deferred. MCL 769.1k(1)(b) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). A defendant may be required to pay by wage assignment the penalties imposed pursuant to MCL 769.1k(1)(b). MCL 769.1k(3). The court may provide that those penalties be collected at any time. MCL 769.1k(4).

## Part VIII—Specific Types of Sentences

### 8.41 Delayed Sentencing

#### Other costs.

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text immediately before Section 8.42 on page 179:

MCL 769.1k provides a court with general authority to impose fines, costs, expenses of providing legal assistance, assessments, and reimbursement under MCL 769.1f on a defendant at the time a defendant's sentence is delayed. MCL 769.1k(3) authorizes a court to order that a defendant pay those monetary penalties by wage assignment. In addition, a court may provide for the collection of any penalties imposed pursuant to MCL 769.1k at any time. MCL 769.1k(4).

## Part VIII—Specific Types of Sentences

### 8.42 Deferred Adjudication of Guilt

#### E. Terms and Conditions of Probation Imposed Pursuant to Deferred Adjudication Provisions

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text after the first paragraph on page 183:

MCL 769.1k provides a court with general authority to impose fines, costs, expenses of providing legal assistance, assessments, and reimbursement under MCL 769.1f on a defendant at the time entry of an adjudication of guilt is deferred. The general authority to impose the monetary penalties listed in MCL 769.1k(1)(a) and (b) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). MCL 769.1k(3) authorizes a court to order that a defendant pay those monetary penalties by wage assignment. In addition, a court may provide for the collection of the penalties imposed pursuant to MCL 769.1k at any time. MCL 769.1k(4).



## Part VIII—Specific Types of Sentences

### 8.43 Youthful Trainee Act—Deferred Adjudication

**Terms and conditions imposed pursuant to deferred adjudication provisions.**

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text on page 190 before the paragraph beginning with “**Court’s discretion over a youthful trainee’s status**”:

MCL 769.1k provides a court with general authority to impose fines, costs, expenses of providing legal assistance, assessments, and reimbursement under MCL 769.1f on a defendant at the time entry of an adjudication of guilt is deferred. The general authority to impose the monetary penalties listed in MCL 769.1k(1)(a) and (b) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). MCL 769.1k(3) authorizes a court to order that a defendant pay those monetary penalties by wage assignment. In addition, a court may provide for the collection of the penalties imposed pursuant to MCL 769.1k at any time. MCL 769.1k(4).

Effective January 1, 2006, 2005 PA 315 amended MCL 780.905 to require payment of the crime victim assessment whenever a defendant is charged with a qualifying offense and the charge is resolved in a manner specified by the statute. Insert the following text after the update described above:

Whenever an individual charged with a felony offense is assigned to youthful trainee status, the court must order the individual to pay a \$60.00 crime victim assessment. MCL 780.905(1). Only one crime victim assessment per case may be ordered, even when the case involves multiple offenses. MCL 780.905(2).

**Note:** In addition to felony offenses, crime victim assessments must be ordered in cases involving persons charged with “serious” or “specified” misdemeanor offenses. MCL 780.905(1). See Miller, *Crime Victim Rights Manual—Revised Edition* (MJI, 2005), Section 2.8, for more information about crime victim assessments.